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IN THE

Supreme Court of the United States

October Term, 1961

NO. 568

CHARLES EDWARD ANDERSON BERRY, *Petitioner*

v.

UNITED STATES OF AMERICA, Respondent

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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Petitioner, Charles Edward Anderson Berry, prays that this Court will grant rehearing of its order of January 8, 1962 denying his Petition for Certiorari in the above entitled case and that a writ of certiorari issue to review the judgment of the Court of Appeals for the Eighth Circuit in such case, as prayed for in said Petition for Certiorari.

Reasons for Granting Rehearing and Issuing the Writ

1. The indictment avers, inter alia, that petitioner's purpose was to compel, induce and entice prosecutrix "to give herself up to debauchery and to engage in other immoral practices" (R. 3-9). Before petitioner could be legally convicted under these averments there would at least have to be a jury finding that his purpose was to compel, induce or entice prosecutrix "to give herself up to debauchery." But there is no such finding. The verdict implies no such finding because the charge to which the verdict responded did not require the jury, as a condition of convicting petitioner, to make any such finding. All the charge required of the jury, as basis for conviction, was a finding that petitioner transported prosecutrix from El Paso to St. Louis for the purpose of compelling, inducing or enticing her to engage in or complete a sexual act with him and that such purpose was immoral (R. 379). The verdict of guilty, responding to this charge, necessarily presupposes that the jury found that petitioner's only purpose was an immoral purpose to compel, induce or entice prosecutrix to engage in or complete a sexual act with him; whereas, the only jury finding as to his purpose that would satisfy the indictment would have been a finding that it was his purpose to compel, induce or entice prosecutrix "to give herself up to debauchery and to engage in other immoral practices." Thus the essential facts the verdict established as to his purpose are substantially different from the essential facts which the indictment avers with respect to his purpose. In short, the kind of verdict that ought to be in the record as a predicate for the conviction is lacking.

2. We therefore submit that the conviction is not sufficiently supported by the verdict. To allow the conviction to stand in these circumstances would, we respectfully submit, allow petitioner to be deprived of his liberty without the due process of law guaranteed him by the Fifth Amendment of the United States Constitution.

3. The foregoing grounds were not previously presented in the petition for certiorari and are here now submitted in the good faith belief of petitioner and his counsel that such grounds are substantial and warrant a grant of the rehearing here sought and a grant of writ of certiorari to review the judgment of the court below.

Conclusion

For the reasons set forth above and in the Petition for Certiorari it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Court of Appeals for the Eighth Circuit.

Respectfully submitted,

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By_____
Of Counsel

Certificate of Counsel

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the Rules of this Court.

LUTHER E. JONES, JR.
Of Counsel for Petitioner